

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-Based)	WT Docket No. 02-381
Services to Rural Areas and Promoting)	
Opportunities for Rural Telephone Companies)	
to Provide Spectrum-Based Services)	

To: Wireless Telecommunications Bureau

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”), by its attorneys, hereby submits comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Further Notice of Proposed Rulemaking* (“*Further Notice*”) seeking comment on the implementation of additional policies, including the establishment of a “keep what you use” licensing approach, intended to foster further deployment of wireless services to rural areas.¹ Specifically, RTG supports the adoption of a “keep what you use” licensing approach similar to the “unserved area” licensing model in place in the cellular service,² and urges the Commission to adopt a form of this “re-licensing” approach for all existing and future commercial wireless services. Implementation of a “keep what you use” licensing approach for all future and existing commercial wireless licenses will effectively end the warehousing of rural spectrum by large, nationwide carriers. Additionally, adoption of “keep what you use” will provide rural operators with

¹ *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum Based Services, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 02-381, *rel.* September 27, 2004 (“*Rural Report and Order*” and “*Further Notice*.”)

² See 47 C.F.R. §22.949.

partitioning, disaggregation, and spectrum leasing opportunities that have largely not existed. While RTG applauds the Commission for the policies adopted in its *Rural Report and Order*, RTG notes that meaningful reform cannot take place until the Commission adopts a “keep what you use” licensing approach for all licenses in existing and future commercial wireless services.

I. STATEMENT OF INTEREST

RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education in a manner that best represents the interests of its membership. RTG’s members have joined together to speed delivery of new, efficient, and innovative telecommunications technologies to the populations of remote and underserved sections of the country. RTG’s members provide wireless telecommunications services, such as cellular telephone service and Personal Communications Services, among others, to their subscribers. RTG’s members are small businesses serving or seeking to serve secondary, tertiary and rural markets. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies.

II. COMMENTS

A. The FCC Should Establish a “Keep What You Use” Licensing Approach for Licenses in All Future and Existing Commercial Wireless Services

In its *Further Notice*, the Commission seeks comment on whether or not it should consider establishing a “keep what you use” re-licensing approach in all future service-

specific proceedings and in all existing licensed terrestrial wireless services.³ Should the Commission truly desire to enact meaningful measures to promote the deployment of spectrum-based services to rural and unserved areas, the FCC should adopt a “keep what you use” licensing approach for licenses in both newly allocated and existing commercial wireless services.⁴ Without the establishment of such a re-licensing scheme, the results of the Commission’s groundbreaking rural initiatives in this proceeding, will fall far short of meaningful reform.

Specifically, with regard to all commercial wireless services that will be allocated and licensed in the future (including the Advanced Wireless Services and Upper and Lower 700 MHz Bands), the Commission should abandon its meaningless “substantial service” performance requirement and instead implement a “keep what you use” performance benchmark to be applied at the end of a licensee’s initial license term.⁵ As RTG noted in comments previously filed in this proceeding, the “substantial service” performance benchmark, especially when applied to licensees holding large geographic service area licenses, is vague and nearly unenforceable.⁶ Allowing licensees of new

³ *Further Notice* ¶148.

⁴ While the Commission notes that it will consider the definition of “use” in separate proceedings, RTG suggests that the Commission should determine “use” through real world propagation studies. Based on the cellular model, the Commission should determine actual “use” pursuant to the mandatory submission of coverage maps and underlying engineering studies and data.

⁵ RTG submits that for newly licensed services, the FCC should provide new licensees with an initial license term that is long enough in duration so that these new licensees are given enough time to adequately build-out their existing wireless networks. This initial license term may or may not be for a period of ten years. In determining the length of an initial license term on a service-by-service basis, the Commission should consider whether incumbents need to be relocated from the existing band, the availability of wireless equipment and other factors which may be relevant in providing licensees with enough time to adequately build-out their wireless network. At the end of this initial term, these licensees will be subject to the “keep what you use” re-licensing approach.

⁶ Comments and Reply Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies and the Rural Telecommunications Group, *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum Based Services, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 02-381 (“Joint Comments” and “Joint Reply Comments”).

commercial wireless services to utilize the meaningless “substantial service” standard will ensure that rural areas will remain unserved, while spectrum auction winners are able to maintain their stranglehold on such rural spectrum—possibly indefinitely. While the Commission, in its *Rural Report and Order*, notes that the “substantial service” requirement will give licensees “flexibility to develop rural-focused business plans and deploy spectrum-based services in more sparsely populated areas,”⁷ there is currently no evidence that some deployment has occurred. Instead, by establishing a definitive “keep what you use” benchmark for all newly allocated and licensed commercial wireless services, the Commission will ensure that spectrum that has laid fallow for ten or more years following the issuance of an initial license will actually be utilized by a carrier prepared to immediately deploy much-needed wireless services to rural and unserved areas.

For existing commercial wireless licensees, the Commission should establish a “keep what you use” performance benchmark to become effective five years following the conclusion of a licensee’s initial license term. Specifically, under this proposal, Personal Communications Service licensees, for example, who were granted original licenses in 1995 and who will be filing applications for license renewal in 2005, will have an additional five years—until 2010- to continue building out their existing networks prior to facing loss of a portion of their license. While the Commission has less flexibility to eliminate performance requirements that are already in place for existing licensed services (such as “substantial service”), it is well within the Commission’s purview to establish additional performance benchmarks for subsequent license terms. In fact, the implementation of such additional performance requirements is in the public

⁷ *Rural Report and Order* ¶76.

interest and in accordance with Section 309(j) of the Communications Act of 1934, as amended (“Act”).⁸

Establishment of a “keep what you use” re-licensing approach five years following the initial license renewal for existing licenses will not only allow rural carriers to access spectrum that has been warehoused for fifteen or more years, but, as explained in greater detail below, will stimulate transactions in the secondary market, leading to an increase in partition, disaggregation and spectrum leasing arrangements. Taken in sum, RTG’s proposal to establish a “keep what you use” licensing regime for new and existing commercial wireless services strikes the appropriate balance between providing enough time for a licensee to build-out its licensed service area and ensuring that unused spectrum will be put to its maximum and best use.

B. Large Carrier Opposition to “Keep What You Use” Further Highlights Their Desire to Warehouse Valuable Rural Spectrum and Their Lack of Understanding of the Rural Marketplace.

Prompted by the opposition by large, nationwide wireless carriers,⁹ to the adoption of a “keep what you use” re-licensing approach, in its *Further Notice*, the Commission seeks comment on whether the benefits of adopting “keep what you use” in terms of increasing access to spectrum in rural areas are likely to outweigh the potential costs.¹⁰ Specifically, the Commission summarizes the large carrier position that

⁸ See 47 U.S.C. § 309(j) (4) (B) (In prescribing competitive bidding regulations, “The commission shall include performance requirements, such as appropriate deadlines, and penalties for performing failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licenses or permit fees, and to promote investment in and rapid deployment of new technologies and services”)

⁹ See Reply Comments of Cingular Wireless, LLC, Reply Comments of Nextel Partners, Inc., *In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum Based Services, Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 02-381.

¹⁰ *Further Notice* ¶148.

“adopting a keep what you use” re-licensing approach may not actually result in additional rural deployments because, if it is economically beneficial for a carrier to deploy services in a particular area, they have sufficient incentive to do so without regulatory intervention.”¹¹ Nationwide carriers also argue in comments that rejection of “keep what you use” is warranted because its implementation will: (1) devalue licensed spectrum and chill investment in wireless services;¹² (2) upset the value of spectrum as large carriers are forced to make unwise economic decisions to build out a rural area in order to “save” a license;¹³ and (3) increase transactional and legal costs for affected licensees.¹⁴ Taken as a whole, the “many” concerns raised by nationwide carriers regarding the adoption of a “keep what you use” performance benchmark for new and existing wireless services boil down to just one thing: money.

The notion asserted by nationwide carriers that rural areas will be served only if and when these carriers believe it is economical to do so highlights large carriers’ lack of understanding of the rural marketplace. While rural carriers are also concerned about the “bottom line” when it comes to wireless build outs and operations, these carriers are equally, if not more, concerned about providing reliable wireless services to their communities. Many rural wireless carriers are subsidiaries of rural telephone companies and cooperatives, which were formed not for profit, but to provide service in areas where no other carrier was willing to operate. These cooperatives are a major part of the rural community, and are key to ensuring economic visibility and growth of the rural community. For these rural telecommunication companies the provision of meaningful

¹¹ *Further Notice* ¶153.

¹² See Reply Comments of Nextel Communications at 8; *Further Notice* ¶153.

¹³ See Reply Comments of Sprint PCS at 12; *Further Notice* ¶153.

¹⁴ See Reply Comments of Nextel Partners at 7-8; *Further Notice* ¶153.

service still outweighs financial the need to see a fast return on investment. The return on investment in a rural area is longer than in mass populated areas and rural business plans and investments reflect this. If rural carriers shared their urban counterparts, view that they must wait only until it is “economically feasible” to provide service to rural areas,¹⁵ rural Americans would likely be forced to wait indefinitely for the deployment of meaningful wireless services to their communities.

While nationwide carriers believe it would be less expensive to keep rural spectrum under lock and key than it would be to provide meaningful service to unserved and rural areas, such an approach specifically undermines the Commission’s goals in this proceeding and Congress’ mandate in Section 309(j) of the Act.¹⁶ It is this lack of understanding of the rural marketplace and the reluctance to build out in rural areas because of “prohibitive costs” that illustrates just how important the adoption of “keep what you use” is to rural Americans. “Keep what you use” provides a fair and efficient way to put fallow spectrum into the hands of local entities willing to deploy commercial wireless services. In that context, RTG submits that the benefits to rural America certainly outweigh the small transactional costs to billion dollar nationwide carriers.

C. The Establishment of a “Keep What You Use” Licensing Approach is the Only Way that Large, Nationwide Carriers Will Entertain Partition, Disaggregation and Spectrum Leasing Deals

In its *Further Notice*, the FCC also seeks to develop the record regarding the “successes” of the Commission’s partitioning and disaggregation rules.¹⁷ Sadly, RTG’s

¹⁵ See Reply Comments of Nextel Partners, Inc. at 10.

¹⁶ See note 8, *Supra*.

¹⁷ *Further Notice* ¶148.

members have little to contribute to the Commission in the way of “real-world” partitioning and disaggregation experience, as rural carriers have been consistently shut out of such transactions by nationwide carriers.¹⁸ RTG believes that the only way nationwide carriers will be interested in partitioning, disaggregating or leasing portions of unused spectrum to small rural carriers would be if these large carriers faced losing portions of licenses that had not been built out. Accordingly, the Commission’s belief that “a ‘keep what you use’ approach would seem to encourage licensees to engage in more partitioning, disaggregation and spectrum leasing arrangements” is absolutely true.¹⁹ If the FCC establishes a “keep what you use” re-licensing scheme, rural carriers will finally gain access to much-needed underused spectrum, while large nationwide carriers would be adequately compensated for granting such use. Without “keep what you use,” however, rural carriers will still struggle to get the attention of large nationwide carriers to do deals that these carriers deem financially insignificant.

Finally, while RTG agrees with the Commission that it may be too soon to evaluate whether or not the FCC’s leasing rules adopted in its recent *Secondary Markets* rulemaking proceeding will have a positive effect on rural transactions,²⁰ it is already clear that many rural carriers are facing the same hurdles in trying to secure spectrum leases as they have in attempting to effectuate partitioning and disaggregation transactions.²¹ Accordingly, the FCC cannot afford to delay implementation of “keep what you use” while it gathers additional information on the successes of its spectrum leasing initiative. Even a delay of one year would certainly slow rural deployments and

¹⁸ Joint Comments 10-11; *Further Notice* ¶147.

¹⁹ *Further Notice* ¶155.

²⁰ *Further Notice* ¶149.

²¹ Joint Comments 10-11; *Further Notice* ¶150.

continue to leave most of rural America on the wrong side of the “digital divide.” Furthermore, the enactment of “keep what you use” will do more to spur additional spectrum leasing in rural areas than any other “incentive” that the Commission would otherwise provide.²²

III. CONCLUSION

When the Commission initiated this proceeding in 2003, the FCC set out its lofty goals to establish new rules and regulations designed to encourage and facilitate the deployment of wireless services to rural and unserved portions of the United States. Although the Commission has adopted several measures that may produce progress toward that end, the Commission has also rejected several key measures (including RTG’s proposals to set aside at least one spectrum block in every newly-allocated service to be licensed in small Rural Service Areas and Metropolitan Statistical Areas and to eliminate the “substantial service” performance requirement) that, if adopted, would have significantly eased the challenges faced by rural wireless operators.

Despite the rejection of many meaningful rural reforms which proved disappointing to rural carriers, RTG applauds the Commission for its *Further Notice* and for its acknowledgement that the establishment of a “keep what you use” regulatory scheme for licensees in both new and existing wireless services is now the last best hope that rural carriers have for the Commission to help ensure the facilitation of meaningful coverage to rural areas. Implementation of “keep what you use” will also increase

²² Such other incentives to encourage leasing suggested by the Commission and other commenters, including offering bidding credits to large carriers that participate in secondary market transactions, still leave ultimate control over whether or not these transactions will occur with the licensee, not with the entity seeking spectrum. *See* Joint Comments 10-11; *Further Notice* ¶150.

secondary market transactions, including partitioning, disaggregation and spectrum leasing, that have, thus far, proven unsuccessful in rural areas. Accordingly, the adoption of a “keep what you use” re-licensing approach for all existing and future licensees of commercial wireless services is necessary to ensure that the FCC’s groundbreaking rural wireless initiative lives up to the Commission’s goal of enacting real measures intended to promote the deployment of wireless services in rural areas.

Respectfully submitted,

**RURAL TELECOMMUNICATIONS
GROUP, INC.**

By: /s/
Caressa D. Bennet
Donald L. Herman, Jr.

Its Attorneys

Bennet & Bennet, PLLC
10 G Street, NE
7th Floor
Washington, DC 20002
(202) 371-1500

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